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DEPARTMENT OF COMMERCE

International Trade Administration

C-533-821

Certain Hot-Rolled Carbon Steel Flat Products From India: Implementation of Determinations Under Section 129 of the Uruguay Round Agreements Act

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce

SUMMARY: On April 18, 2016, the U.S. Trade Representative (USTR) instructed the Department of Commerce (the Department) to implement its determinations under section 129 of the Uruguay Round Agreements Act (URAA), regarding several countervailing duty (CVD) administrative reviews, which render them not inconsistent with the World Trade Organization (WTO) dispute settlement findings in *United States – Countervailing Duty Measures on Certain Hot-Rolled Carbon Steel Flat Products from India – (DS436)*.¹ The Department issued its final determinations in these section 129 proceedings on April 18, 2015. The Department is now implementing these final determinations.

DATES: Effective April 18, 2016

FOR FURTHER INFORMATION CONTACT: Eric B. Greynolds, Patricia Tran, or Samuel Brummitt, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-6071, (202) 482-1503, or (202) 482-7851, respectively.

¹ See Memorandum to the File, “Hot-Rolled Carbon Steel Flat Products from India, Section 129 Determination (DS436) Placement of Letter from the United States Trade Representative (USTR) to the Secretary of Commerce (dated April 18, 2016),” (April 25, 2016).

SUPPLEMENTARY INFORMATION:

Background

On September 23, 2015, the Department informed interested parties that it was initiating proceedings under section 129 of the URAA to implement the findings of the WTO dispute settlement panel in DS436.² Specifically, the Department issued preliminary determinations regarding: (1) Facts Available;³ and (2) Other Issues.⁴

The Department invited interested parties to comment on the section 129 preliminary determinations.⁵ After receiving comments, rebuttal comments, and a hearing on April 8, 2016, the Department issued the final determination on April 14, 2016.⁶

On April 18, 2016, USTR notified the Department that, consistent with section 129(b)(3) of the URAA, consultations with the Department and the appropriate congressional committees with respect to the April 14, 2016, determination have been completed. Also on April 18, 2016, in accordance with section 129(b)(4) of the URAA, USTR directed the Department to implement these determinations.

² See *Certain Hot-Rolled Carbon Steel Flat Products from India: Notice of Commencement of Compliance Proceedings Pursuant to Section 129 of the Uruguay Round Agreements Act*, 80 FR 57336 (September 23, 2015).

³ See Memorandum to Paul Piquado, Assistant Secretary for Enforcement and Compliance, “Section 129(b) Proceeding: United States - Countervailing Duty Measures on Certain Hot-Rolled Carbon Steel Flat Products from India (WTO/DS436): Preliminary Determinations of Facts Available,” (March 17, 2016).

⁴ See Memorandum to Paul Piquado, Assistant Secretary for Enforcement and Compliance, “Section 129 Proceeding: United States – Countervailing Duty Measures on Certain Hot-Rolled Carbon Steel Flat Products from India (WTO/DS436): Preliminary Determination on Other Issues,” (March 18, 2016).

⁵ See Department Memorandum to the File, “Section 129 Proceedings: United States – Countervailing Duty (CVD) Measures on Certain Hot-Rolled Carbon Steel Products from India (WTO/DS436): Schedule for written argument and a hearing,” (March 21, 2016).

⁶ See Memorandum to Paul Piquado, Assistant Secretary for Enforcement and Compliance, “Section 129 Proceeding: United States - Countervailing Duty Measures on Certain Hot-Rolled Carbon Steel Flat Products from India (WTO/DS436): Final Determination,” (April 14, 2016).

Nature of the Proceedings

Section 129 of the URAA governs the nature and effect of determinations issued by the Department to implement findings by WTO dispute settlement panels and the Appellate Body. Specifically, section 129(b)(2) of the URAA provides that “notwithstanding any provision of the Tariff Act of 1930,” upon a written request from USTR, the Department shall issue a determination that would render its actions not inconsistent with an adverse finding of a WTO panel or the Appellate Body.⁷ The Statement of Administrative Action, U.R.A.A., H. Doc. 316, Vol. 1, 103d Cong. (1994) (SAA), variously refers to such a determination by the Department as a “new,” “second,” and “different” determination.⁸ After consulting with the Department and the appropriate congressional committees, USTR may direct the Department to implement, in whole or in part, the new determination made under section 129 of the URAA.⁹ Pursuant to section 129(c) of the URAA, the new determination shall apply with respect to unliquidated entries of the subject merchandise that are entered or withdrawn from warehouse, for consumption, on or after the date on which USTR directs the Department to implement the new determination.¹⁰ The new determination is subject to judicial review, separate and apart from judicial review of the Department’s original determination.¹¹

Final Determinations: Analysis of Comments Received

The issues raised in the comments and rebuttal comments submitted by interested parties to these proceedings are addressed in the final determination. The issues included in the respective final determinations are as follows: (1) Ocean Freight; (2) Whether the CVD Rate Determined for JSW in the Department’s 129 Proceeding Supersedes the Amended Final

⁷ See 19 U.S.C. 3538(b)(2).

⁸ See SAA at 1025, 1027.

⁹ See 19 U.S.C. 3538(b)(4).

¹⁰ See 19 U.S.C. 3538(c).

¹¹ See 19 U.S.C. 1516(a)(2)(B)(vii).

Results for JSW for the 2006 Administrative Review; (3) JSW's Cash Deposit Rate for Future Entries of Hot-rolled Carbon Steel Flat Products From India; (4A) Iron Ore Benchmarks: Tier I Benchmarks; (4B) Iron Ore Benchmarks: NMDC's export price to Japan; (5) NMDC as a Public Body; (6) Mining Rights of Iron Ore; (7) Mining of Coal; (8) Administration of Section 129 Proceeding; and (9) Specificity of Sale of High-Grade Iron Ore by NMDC. The final determination is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <http://access.trade.gov> and is available to all parties in the Central Records Unit, room B8024 of the main Department of Commerce building. In addition, complete versions of the final determinations can be accessed directly on the internet at <http://enforcement.trade.gov/frn/index.html>. The signed version of the final determination and the electronic version of the final determinations are identical in content.

Final Determinations: Recalculated Countervailing Duty Rates

The recalculated CVD rates are listed below. As indicated, we made changes to the net subsidy rates in certain segments.¹² The net subsidy rates for the remaining CVD segments in DS436 are unchanged.

¹² See *Final Results of Countervailing Duty Administrative Review: Certain Hot-Rolled Carbon Steel Flat Products From India*, 73 FR 40295 (July 14, 2008) (2006 Final Results); *Final Results of Countervailing Duty Administrative Review: Certain Hot-Rolled Carbon Steel Flat Products From India*, 74 FR 20923 (May 6, 2009); (2007 Final Results); and *Final Results of Countervailing Duty Administrative Review: Certain Hot-Rolled Carbon Steel Flat Products From India*, 75 FR 43488 (July 26, 2010) (2008 Final Results).

Amended Countervailable Subsidy Rates <i>Ad Valorem</i> (Percent): 2006 Final Results		
Exporter/Producer	CVD Rate (administrative review)	Revised CVD Rate
JSW Steel Ltd.	484.41 ¹³	215.54
Tata Steel Ltd.	27.22	18.81
Essar Steel India Limited ¹⁴	17.50	15.40
Ispat Industries Ltd.	15.27	14.82

Amended Countervailable Subsidy Rates <i>Ad Valorem</i> (Percent): 2007 Final Results		
Exporter/Producer	CVD Rate (administrative review)	Revised CVD Rate
Essar Steel India Limited ¹⁵	76.88	68.77

¹³ Pursuant to a litigation settlement, the Department published an amended final results; instructed U.S. Customs and Border Protection (CBP) requiring the liquidation of entries during the 2006 POR at 76.88 percent; and issued instructions to CBP establishing the future cash deposit rate for JSW Steel Ltd. at the rate of 76.88 percent. *See Certain Hot-Rolled Carbon Steel Flat Products From India: Amended Final Results of Countervailing Duty Administrative Review Pursuant to Court Decision*, 75 FR 80455 (December 22, 2010).

¹⁴ In the 2006 Final Results, Essar Steel India Limited was referred to as Essar Steel Ltd.

¹⁵ In the 2007 Final Results, Essar Steel India Limited was referred to as Essar Steel Ltd.

Amended Countervailable Subsidy Rates <i>Ad Valorem</i> (Percent): 2008 Final Results		
Exporter/Producer	CVD Rate (administrative review)	Revised CVD Rate
Tata Steel Ltd. ¹⁶	577.28 ¹⁷	140.18

Implementation of the Revised Cash Deposit Requirements

On April 18, 2016, in accordance with sections 129(b)(4) and 129(c)(1)(B) of the URAA and after consulting with the Department and Congress, USTR directed the Department to implement these final determinations. With respect to each of these segments, the Department will instruct U.S. Customs and Border Protection to require a cash deposit for estimated countervailing duties at the appropriate rate for each exporter/producer specified above, for entries of subject merchandise, entered or withdrawn from warehouse, for consumption, on or after April 18, 2016. This notice of implementation of these section 129 final determination is published in accordance with section 129(c)(2)(A) of the URAA.

Ronald K. Lorentzen
Acting Assistant Secretary
for Enforcement and Compliance

Dated: April 29, 2016.

¹⁶ In the 2008 *Final Results*, Tata Steel Ltd. was referred to as Tata Steel Limited.

¹⁷ Pursuant to a litigation settlement, the Department published an amended final; calculated the total amount of duties due on the three entries covered by the litigation based on 102.74 percent and issue instructions to U.S. Customs and Border Protection (CBP) requiring the total amount of duties due to be assessed on the remaining two entries; and issue instructions to CBP establishing the future cash deposit rate for Tata Steel Ltd. at the rate of 102.74 percent. See *Certain Hot-Rolled Carbon Steel Flat Products From India: Amended Final Results of Countervailing Duty Administrative Review Pursuant to Court Decision*, 76 FR 77775 (December 14, 2011).

